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## BOOK REVIEWS

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CASES ON QUASI CONTRACT, by Edward S. Thurston. American Case Book Series. St. Paul: West Publishing Co., 1916; pp. 622.

Every student of Quasi Contracts and the related branches of Equity, and every lawyer who is sufficiently familiar with the modern treatment of this field of law to make use of such a work, should welcome this book. Of principal value, is the presentation of cases, some new, some old, which have not heretofore appeared in any work on this subject. Each such case is, of course, of greater value, and represents larger efforts upon the part of the editor, than would similar contributions in most fields of law, because of the difficulty of finding the cases on this subject, digested as they are under almost every head from A to Z. Second in importance of Mr. Thurston's contributions, is the suggestion, here and there, of some new points of view, for the most part indirectly made through the collocation of the materials, for the editor seldom drops the scissors for the pen. In the broader outlines and analyses of the subject, the editor presents us with nothing new, and in this respect disappoints the reviewer, who had looked for help from this quarter—for the disclosure of some "comparatively few and simple ideas which underlie the infinite variety" of cases on unjust enrichment, some ideas more specific than the familiar formula that no one shall be permitted to unjustly enrich himself at another's expense, and yet broader than any of the other rules that have yet been deduced from the cases. Perhaps this refractory body of law will never yield to more scientific analysis than it has received. Perhaps Mr. Thurston has solved the riddle but for pedagogic reasons emulates the Sphinx. In any case, the editor is not to be censured for adopting the current classification, based on the mode by which the enrichment is acquired. Yet, accepting that scheme of classification, the reviewer regrets that Mr. Thurston did not arrange the topics in the order adopted by Mr. Scott in his collection of cases. The principal advantage which has been found in the other order is this, that it makes possible a preliminary segregation of the problems as to what constitutes an enrichment, and what is the measure of enrichment. Having fairly disposed of these embarrassing inquiries with cases in which it is clear that the enrichment, if any, is unjust, the ground is cleared for the yet more embarrassing problems presented in the succeeding cases. Of these, some may be reduced to the question whether the circumstances of an admitted enrichment are such that it cannot justly be retained; others involve in an inseparable combination, the two questions, as to the existence and amount of an enrichment, and as to whether the enrichment, if any, can justly be retained. Throughout these latter inquiries, one is aided by a preliminary view of the somewhat arbitrary and artificial conception of enrichment which the law is forced to adopt. Mr. Scott's work, in spite of its advantage of order, is impaired by a very inadequate selection of cases, a fault more serious than any defect in the arrange-

ment of the material. The present work is, as regards the selection of cases of a high order. In this respect, the only fault the reviewer would find with it is the inadequate representation of the conservative views as to Duress.

Faults have been charged to Mr. Thurston's work, but the reviewer would entirely misrepresent his opinion of the work if he did not close in terms of eulogy. It is a scholarly and lawyer-like piece of work. It is a mine of material which is excellent for teaching purposes, or for research, or for the practitioner's "search" if he knows how to use it. The profession is to be congratulated upon this contribution to its literature.

EDGAR N. DURFEE.

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THE PRESIDENT'S CONTROL OF FOREIGN RELATIONS. By Edward S. Corwin, Ph.D., Professor of Politics, Princeton University. Princeton University Press. Princeton, 1917; pp. vi, 216.

In view of the interest which attaches at the present time to the control of foreign affairs, the present volume is to be welcomed as a summary of the principles and precedents governing the exercise of this important function of state in the United States.

The treatise falls into three parts. Of these the first and third include extended quotations, in the one case from the famous *Pacificus-Helvidius* controversy between Hamilton and Madison as to the constitutionality of the Neutrality Proclamation of 1793, and in the other from the *Spooner-Bacon* debate in the Senate as to the general control of foreign affairs. The second and most pretentious portion of the work is a statement, at once clear and concise, of the various precedents and discussions bearing upon the different aspects of the President's control over foreign relations,—his powers as to diplomatic intercourse, recognition of new states and governments, treaty-making, executive agreement, and "Presidential war-making". In the result, the author has satisfactorily fulfilled the two-fold object which he had in view,—to present in compact form the more important material pertinent to the subject and to state succinctly the conclusions arrived at in practice.

Exception must, however, be taken to the interpretation given to Madison's chief contention in the *Helvidius* papers. Thus (p. 28), Madison is accused of inconsistency in implying "that the 'executive power' with which the President is vested by the opening clause of Article II is not to be taken as bestowing other powers than those specifically mentioned in the rest of the article." This would appear a misconception. Madison is not concerned to combat the constitutional axiom that the grant of executive power to the President in Article II is general in its scope, but rather Hamilton's contention that the supplementary powers implied in the declaration of war and peace and in treaty-making are essentially executive, on the ground that both in theory and under the Constitution these powers are largely legislative in nature. This proposition is in no wise inconsistent with the view, advocated elsewhere by Madison, that the President has the power of removal, because it is in essence executive. And it is only fairness to recall the variance between Hamilton's contentions in this controversy and the views which he